

ERNEST B. WILLIAMS

IBLA 95-136

Decided October 7, 1997

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting a small miner exemption and declaring mining claims abandoned and void. MMC 9061 through MMC 9068, MMC 16429, and MMC 120416.

Reversed.

1. Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

A decision rejecting a small miner exemption and declaring claims abandoned and void for failure to pay rental fees on the grounds that a claimant owned more than 10 claims is properly reversed where the appellant shows that the claimants filed certifications of exemption for the 1993 and 1994 assessment years on Aug. 24, 1993, listing only 10 claims, and other evidence demonstrates that they had abandoned any additional claims previously held as of the date of the submission of their certifications of exemption. An additional decision removing the appellant's name as a co-owner of a claim also listed on these certifications of exemption due to the same rejection of his small miner exemption is also reversed.

APPEARANCES: Ernest B. Williams, Troy, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Ernest B. Williams has appealed from so much of a Decision of the Montana State Office, Bureau of Land Management (BLM or the Bureau), dated November 4, 1994, as declared unpatented mining claims MMC 9061 through MMC 9068 and MMC 16429 abandoned and void for failure to timely pay the rental fees required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), Pub. L. No. 102-381, 106 Stat. 1378-79 (1992), and 43 C.F.R. § 3833.1-5 (1993) for the 1993 and 1994 assessment years. He has also appealed from a Decision from the same office, also dated November 4, 1994, which removed his name as co-owner of MMC 120416 for the same reasons.

On August 24, 1993, Ernest B. Williams and Marie Williams, listed therein as claimants, filed certifications of exemption from the

rental fees imposed by the Act for each of the assessment years ending September 1, 1993, and September 1, 1994. These certifications were filed in lieu of submission of annual rental payments of \$100 for each claim for each assessment year under a provision of the Act known as the small miner exemption which waived rental payments upon a showing, *inter alia*, that the claimant held no more than 10 mining claims. Both certifications listed only 10 mining claims. 1/ By notice dated June 16, 1994, BLM informed claimants it could not accept those documents because its records indicated Ernest B. Williams held an interest in more than 10 claims when the exemptions were filed. The Bureau afforded claimants an opportunity to establish that Ernest B. Williams had reduced his holdings to 10 or fewer claims as of August 31, 1993.

When claimants failed to respond, BLM issued two separate Decisions on November 4, 1994. 2/ In the one determination, BLM, ostensibly relying on this Board's Decision in Lee H. and Goldie E. Rice, 128 IBLA 137 (1994), held that Williams "failed to meet the exemption requirements in that as of August 31, 1993, the records of this office indicate he held an interest in 11 mining claims * * * and no rental was paid for these claims." (Decision 1, at 2.) The Bureau declared the Bluebird Group #1 through #10 claims abandoned and void. In the other determination, BLM apprised claimants that, according to its records, Marie Williams held an interest in only the Bluebird Group #11 mining claim (MMC 120416) and concluded it would therefore remove Ernest B. Williams' name as a co-owner of this claim because he failed to show he qualified for the small miner exemption. 3/ Ernest B. Williams timely appealed.

In his SOR, Williams argues the claimants had abandoned the Bluebird Group #10 claim in early 1993. He notes that, not only did they list only 10 claims on their certification for exemption, but also that the affidavit of labor they filed with the Lincoln County Recorder's Office

1/ The claims listed were the Bluebird Group Claim #1 through #4 (MMC 9061-MMC 9064), the Blackbird Group #6 through #9 (MMC 9065-MMC 9068), the Blackbird Group #5 (MMC 16429), and the Blackbird Group #11 (MMC 120416). Not listed therein was the Blackbird Group #10 (MMC 9069), a claim also located on Nov. 1, 1997, with the first eight claims and maintained with them thereafter through the affidavit of labor filed on Dec. 1, 1992.

2/ Williams asserts that upon receiving the June 16 Notice, he "telephoned the Billings [BLM] office." He indicates that after explaining the situation to BLM he considered the matter settled and "was surprised to receive the November 4, 1994, letter." (Statement of Reasons (SOR) at 1.)

3/ The Bureau's motivation to treat separately the interests in this mining claim is not obvious and, based upon the facts before us, we would further scrutinize this determination but for our disposition of the appeal. Under 43 C.F.R. § 3833.1-6(a)(2) (1993), "[m]ining claims held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted toward the 10-claim limit." As both Ernest B. Williams and Marie Williams share the same address of record, we would assume that this regulation would apply or, at least, further inquiry as to their relationship should be made.

on September 30, 1993, and subsequently submitted to BLM listed, upon amendment, included only the 10 claims for which they had sought a small miner exemption. ^{4/} This was in contrast to previous years in which they had listed all 11 claims on their affidavits of labor. Williams asserts that these actions clearly establish the intent to abandon the claim on which BLM predicated its adverse determinations.

[1] The relevant provisions of the Act, enacted by Congress on October 5, 1992, provide, in pertinent part, that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

106 Stat. 1378 (emphasis added). The Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of the \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The Act further provided, subject to various conditions, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, a provision generally referred to as the small miner exemption. Id. On July 15, 1993, the Department promulgated regulations implementing the rental fee provisions of the Act, see 58 Fed. Reg. 38186, including sections governing rental fee exemption qualifications and filing requirements, later codified at 43 C.F.R. §§ 3833.1-6 and 3833.1-7 (1993). Those regulations stipulated that a small miner choosing not to pay the rental fee was required to file a separate statement on or before August 31, 1993, for each assessment year the exemption was claimed. The regulations also delineated various items that each statement was required to contain. See 43 C.F.R. § 3833.1-7(d) (1993).

^{4/} Williams notes in his SOR that the original affidavit of labor contained a "typo," referring to the fact that the affidavit listed MMC 9069 in Part 1. However, Part 3 of the affidavit listed only the #1 through #9 and the #11 claims. Further, Williams paid the service fee required under 43 C.F.R. § 3833.1-4(b) (1993) for only 10 mining claims. The mistake in Part 1 was noted by BLM in several places in the record on Dec. 21, 1993. Thus, BLM recognized, as least by that date, that the claimants intended to perform and certify assessment work for only 10 mining claims for the assessment year running from Sept. 1, 1993, to Sept. 1, 1994.

In the instant case, claimants timely filed certifications of exemption for both years which satisfied the requirements of 43 C.F.R. § 3833.1-7(d) (1993), but BLM rejected the certifications because it concluded that the Williams held more than 10 unpatented mining claims. In relying on our opinion in Lee H. and Goldie E. Rice, supra, at 137, BLM emphasized the language of the headnote which declared that a BLM decision would be affirmed "[w]here BLM records disclosed that on Aug. 31, 1993, a mining claimant held in excess of 10 mining claims on such lands * * *." However, in subsequent opinions, the Board has found instances where BLM failed to give sufficient weight to the qualifying language which appeared immediately after the statement quoted above: "and where on appeal the claimant failed to provide any evidence to show otherwise." See, e.g., William J. Montgomery, 138 IBLA 31 (1997); The Big Blue Sapphire Co., 138 IBLA 1 (1997). See also Little Bear Mining & Exploration, Inc., 138 IBLA 304 (1997); Burbank Gold, Ltd., 138 IBLA 17 (1997).

In the Montgomery and Big Blue Sapphire cases, we noted that the Rice case did not involve a situation in which claimants had contended that they had abandoned claims in excess of the statutory maximum for the purpose of qualifying for the small miner exemption. The ratio decidendi of the Board's decision was not that the mere fact that BLM's records indicated that mining claimants held more than 10 claims was sufficient to require rejection of an exemption certification, but rather that this fact, coupled with the claimants' failure to provide any evidence to the contrary, supported BLM's rejection of a requested exemption. Rather, we looked to our opinions in both Calvin W. Barrett, 134 IBLA 356 (1996), and Washburn Mining Co., 133 IBLA 294 (1995). Appealing BLM's denial of the exemption after concluding that they owned more than 10 claims, the claimants in both cases argued that they had abandoned other claims for the purpose of meeting the requirements for obtaining the small miner exemption. In both cases, these assertions were corroborated by statements of annual assessment work which had been recorded locally before the August 31 deadline and which covered only the claims listed on their certifications of exemption. The Board found these showings sufficient to establish that the claimants had owned 10 or fewer claims as of the date they filed their certifications seeking the small miner exemption.

However, we noted in Montgomery that the claimants did not record an affidavit of labor for the 1993 assessment year until after the rental fee deadline had passed. We concluded that this was not critical, as abandonment "is a concept well known to mining law, but its basis is the traditional law of abandonment--relinquishment of possession together with the subjective intent to abandon." Montgomery, supra, at 34, quoting Department of the Navy, 108 IBLA 334, 338 (1989) and Oregon Portland Cement Co., 66 IBLA 204, 207 (1982). Thus, the relevance of the affidavits of labor was not that they effected an abandonment of the claims, 5/ but rather that

5/ In point of fact, they did not. Failure to perform assessment work did not, at least prior to the adoption of the Act, result in an abandonment of the claim under either 30 U.S.C. § 28 (1994) or 43 U.S.C. § 1744(a) (1994). As we noted in United States v. Haskins, 59 IBLA 1, 100-101, 88 Interior

they provided evidence of the subjective intent of the claimants to abandon the claims.

As noted above, Williams asserts that he and Marie Williams decided to drop 1 claim and maintain only 10 in order to satisfy the small miner exemption requirements. This assertion finds corroboration in the affidavit of labor received for the 1993 assessment year, which they recorded with the Lincoln County Recorder and filed with BLM. Although the original affidavit referenced 11 claims in that section of the document where they provided the BLM-assigned serial numbers, the remaining parts of the affidavit and the claimants' actions in paying the per claim service fee evinces that only 10 claims were intended to be held. Moreover, the document was subsequently amended to eliminate any confusion over whether an eleventh claim was made subject thereto. All of these actions providing evidence of abandonment of Bluebird Group #10 occurred prior to any action on the part of BLM to reject the exemption certifications.

The facts of this case convince us that Appellants intended to maintain ownership of only the 10 identified claims when they filed certifications of exemption and had abandoned the claim not listed. Thus, we find that BLM's Decision declaring the 10 claims included in the request for exemption to be abandoned and void was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decisions appealed from are reversed as to the claims which are the subject of this appeal.

James P. Terry
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

fn. 5 (continued)

Dec. 925, 975 (1981), historically, failure to perform assessment work did not automatically invalidate a mining claim under 30 U.S.C. § 28 (1994) but rather made it subject to relocation by a third party or withdrawal by the Government. Failure to record annual assessment work or notices of intention to hold, as required by section 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1994), would result in a conclusive statutory presumption of abandonment, but this would not arise until the end of the calendar year when it could be determined that the claimant had failed to file evidence of such work on or before Dec. 30. Thus, the relevance of a local filing is not that it constitutes an abandonment of all claims not listed thereon, but rather that it provides evidence of a preexisting intent to abandon those claims.